

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDDIE DAVID ZAMARRIPA,

Defendant.

NO. CR-10-2025-FVS

**MEMORANDUM OPINION;  
ORDER DENYING MOTION TO  
SUPPRESS; ORDER EXCLUDING  
TIME**

**BEFORE THE COURT** is the Defendant's Motion to Suppress (Ct. Rec. 65) filed on July 2, 2010, to which the Government has responded in opposition (Ct. Rec. 78) and the Defendant has replied (Ct. Rec. 79). The court heard testimony of four City of Yakima police officers and oral argument on July 23, 2010 in Yakima, Washington. Kraig Gardner participated on behalf of Mr. Zamarripa, who was present. Assistant United States Attorney James Goeke appeared on behalf of the Government. Mr. Zamarripa is charged with being a felon in possession of a loaded firearm. He contends that the firearm found on his person resulted from both an unreasonable stop and unreasonable "pat down" search. For the reasons stated herein and in court, the Motion is denied, as both the stop and "pat down" search were reasonable and justified.

I. Findings of Fact

At approximately 4:00 pm on February 3, 2010, in Yakima, Washington, two plainclothes officers with the Yakima Police Department, Randall Baker ("Baker") and

1 Chris Taylor ("Taylor"), assigned to the gang unit, were patrolling the area of Sixth and  
2 Lincoln streets in an unmarked vehicle. The officers observed three men walking down  
3 the street. Officer Baker believed one of the men resembled a car prowling suspect  
4 whose black and white surveillance photograph he had seen earlier in his shift. Upon  
5 inspection of the photograph, the court concluded that the Defendant, Eddie Zamarripa  
6 ("Zamarripa"), bears a strong resemblance to the black and white photograph of the  
7 suspected car prowler.

8 Officers Baker and Taylor saw one of the men, later identified as Mr. Zamarripa,  
9 walk into the street to approach a Chevrolet Impala that was idling at a stop sign. The  
10 officers witnessed Mr. Zamarripa strike the front passenger window of the Impala with  
11 sufficient force such that they believed the window might break. Mr. Zamarripa then  
12 stepped back and spread out his arms in a challenging manner, which the officers  
13 believed was solicitation for a fight. Officer Baker believed this action indicated Mr.  
14 Zamarripa wanted to fight an occupant of the Impala. The Impala drove away without  
15 further incident. It is unclear whether Officers Baker and Taylor attempted to locate the  
16 Impala or its occupants to ascertain what had taken place at the stop sign.

17 Officer Baker or Taylor phoned Officer Ileana Salinas ("Salinas") and Officer  
18 Kevin Cays ("Cays"), who were patrolling nearby in a marked "gang unit" patrol car, and  
19 told those officers of their observations. Baker and Taylor asked Ms. Salinas and Mr.  
20 Cays to contact the suspects since they did not want to expose themselves as police  
21 undercover officers. Officer Baker noted that Mr. Zamarripa was wearing a red beanie  
22 and relayed this information to Officer Salinas. Members of the Norteno gang, active in  
23 the area, including 6th and Lincoln, often identified themselves as such through red  
24 articles of clothing or accessories.

25 Officers Salinas and Cays exited their patrol car and made contact with the three  
26 men, including Mr. Zamarripa. The men were ordered to remove their hands from their  
27 pockets. Officer Salinas recognized Mr. Zamarripa from previous gang-related  
28 investigations and interactions, though she could not recall his name at the time. Given

1 the high level of gang activity in the area and the fact that gang members were often  
2 armed, the officers instructed the men to place their hands on the trunk of their patrol car,  
3 and then conducted a “pat down” of their exterior clothing. Officer Salinas felt a large,  
4 heavy object in the right breast pocket of Mr. Zamarripa’s coat, and strongly believed the  
5 object to be a handgun. Officer Salinas immediately handcuffed Mr. Zamarripa and  
6 opened the zipper of the coat pocket containing the suspected firearm. The object in  
7 question was a loaded .22 caliber revolver. Officer Salinas secured the handgun in the  
8 patrol car and ran a records check for Mr. Zamarripa, confirming that he was a convicted  
9 felon.

10 All of the police officers were experienced officers. The court found their  
11 testimony to be reliable and credible.

## 12 II. Discussion

13 Mr. Zamarripa sets forth two reasons the firearm should be suppressed. First, that  
14 Officers Salinas and Cays lacked a reasonable suspicion to stop Mr. Zamarripa and his  
15 companions, and secondly, that Officers Salinas and Cays lacked justification for patting  
16 down Mr. Zamarripa. Ct. Rec. 66, 5:7-12.

### 17 A. *Terry* Stop

18 *Terry v. Ohio*, 392 U.S. 1, 30 (1968), established that a brief investigatory  
19 detention, though constituting a seizure, was nonetheless lawful provided police have a  
20 reasonable suspicion that criminal activity may be afoot. Mr. Zamarripa begins his  
21 analysis with the question of whether he was seized, but the Government does not  
22 disagree that Mr. Zamarripa was the subject of an investigative *Terry* stop. Ct. Rec. 78,  
23 5:2-9. It is appropriate to turn, therefore, to the factual question of reasonable suspicion.

24 A police officer has sufficient reasonable suspicion to justify a *Terry* stop where  
25 the person being stopped resembles a suspect in a photograph viewed by the police  
26 officer. *United States v. Thomas*, 524 F.3d 855, 858 (8th Cir. 2008). Mr. Zamarripa  
27 bears a close, reasonably ascertainable resemblance to the car prowling suspect seen by  
28 Officer Baker in the photograph. That fact and the conduct of Zamarripa with the Impala

1 automobile and its occupants gave the officers a reasonable basis for the *Terry* stop.

2 Furthermore, the Officers possessed a reasonable belief that malicious mischief  
3 and/or disorderly conduct misdemeanors occurred when they observed Mr. Zamarripa  
4 violently strike the window of the idling Impala and indicate a desire to fight the  
5 occupant(s). Though arguably benign explanations for such conduct could have existed,  
6 it was reasonable for the Officers to consider the actions of Zamarripa and the nature of  
7 the surrounding area, known for unlawful gang activity, in concluding that the actions of  
8 Mr. Zamarripa were potentially criminal and dangerous. This conclusion was bolstered  
9 by the fact that Mr. Zamarripa was wearing a red head covering similar to a bandana,  
10 indicating likely association with the Norteno gang that the Officers knew to be active in  
11 the area.

12 The court finds that Mr. Zamarripa's physical resemblance to the photograph of  
13 the car-prowling suspect, his interaction and apparent criminal contact with the Impala,  
14 and his gang-related head covering in an area known for gang activity created a totality  
15 of circumstances giving rise to a reasonable suspicion that criminal activity was afoot.  
16 Officer Salinas also recognized Mr. Zamarripa as a person associated with gang activity  
17 in the area. Accordingly, the investigative *Terry* stop of Mr. Zamarripa and his  
18 companions was justified.

19 B. Frisk

20 Under *Terry*, a search for weapons is permissible “for the protection of the police  
21 officer, where he has reason to believe that he is dealing with an armed and dangerous  
22 individual.” *Terry*, 392 U.S. at 27. The Officers had sufficient, reasonable concerns  
23 regarding their safety, and the potentially armed and dangerous nature of Mr. Zamarripa  
24 and his companions, to justify the frisk. Officer Salinas stated in her report: “Due to the  
25 area, which is an area that is predominantly Norteno gang members, and recent shootings  
26 involving rival gangs, we conducted a pat down for weapons for our safety.” Ct. Rec.  
27 67, Ex. C. Furthermore, Mr. Zamarripa’s aggressive interaction with the Impala was  
28 relayed to Officers Salinas and Cays. They were outnumbered by the three men. Officer

1 Salinas, an experienced gang patrol officer, also recognized Mr. Zamarripa as having  
2 gang connections from previous interactions. The officers were also aware that gang  
3 members were often armed with knives, guns, brass knuckles, and other weapons. The  
4 court finds that the totality of the circumstances created a reasonable concern for the  
5 officers regarding their safety and that such an exterior frisk was justified. Certainly, in  
6 this case, the activity of Mr. Zamarripa in this case, gave the officers even more  
7 reasonable suspicion of criminal activity than the "furtive" movements of an automobile  
8 passenger found to create reasonable suspicion warranting a pat-down in *U. S. v.*  
9 *Burkett*, \_\_\_ F.3d. \_\_\_ (9th Cir. July 20, 2010), 2010 WL 2814312.

10 III. Conclusions

11 Mr. Zamarripa's criminal interaction with the Impala automobile and its occupants  
12 in an area known for gang activity, his red gang headdress, and his resemblance to the  
13 photograph of the car-prowling suspect gave rise to reasonable suspicion sufficient to  
14 justify a *Terry* stop. The same factors, coupled with the fact that Officer Salinas  
15 recognized Mr. Zamarripa from previous gang-related interactions justified the Officers'  
16 exterior frisk search of Mr. Zamarripa and his companions. Accordingly,

17 **IT IS HEREBY ORDERED:**

18 1. The Defendant's Motion to Suppress (Ct. Rec. 65) is **DENIED**.

19 2. Pursuant to 18 U.S.C. § 3161(h)(1)(D), the time from July 2, 2010, the date of  
20 the filing of the Motion To Suppress to July 23, 2010, the date of the oral decision, is  
21 excluded from the Speedy Trial Act time computation.

22 The Clerk is hereby directed to enter this Order and furnish copies to counsel and  
23 to Judge Van Sickle.

24 **DATED** this 29th day of July, 2010.

25 s/ Justin L. Quackenbush  
26 JUSTIN L. QUACKENBUSH  
27 SENIOR UNITED STATES DISTRICT JUDGE  
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